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IN THE

Supreme Court of the United States

OCTOBER TERM, 1935



No. 401

UNITED STATES OF AMERICA, *Petitioner*,

v.

WILLIAM M. BUTLER, ET AL., Receivers of Hoosac Mills Corporation.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR THE MOUNTAIN STATES BEET GROWERS MARKETING ASS'N

and

THE NATIONAL BEET GROWERS ASSOCIATION, AMICI CURIAE

CLAY R. APPLE,
Counsel.

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STATEMENT

This brief is filed jointly by The Mountain States Beet Growers Marketing Association, a cooperative organization of farmers in Colorado, and The National Beet Growers Association, a farm organization comprised of twelve member associations in eight States, upon the farms of

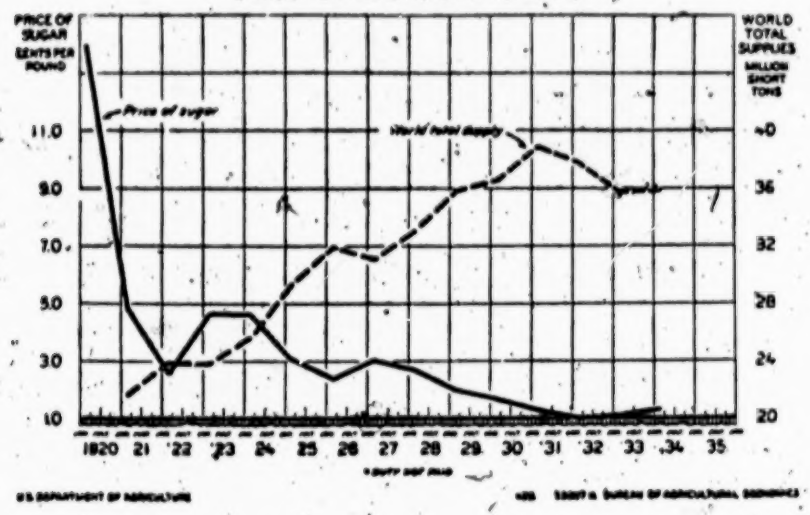
whose members are raised a large part of the sugar beets produced within the continental limits of the United States, together with other basic agricultural products. Most of the 16,000 members of these Associations produce other agricultural products, including the crops of wheat and corn, declared to be basic crops by the Agricultural Adjustment Act.

The crop in which the members of this Association are primarily interested has never produced an exportable surplus. In fact, within the continental limits of the United States is raised only about twenty per cent of the total sugar consumed. Nevertheless, the very low price of sugar, resulting primarily from continued increased production of our Island possessions and foreign countries resulted in such world surpluses that at the time the Act was passed the industry was almost completely demoralized. (World Trade Barriers in relation to American Agriculture, Senate Document No. 70, 73rd Congress, 1st Session, pp. 266-288.)

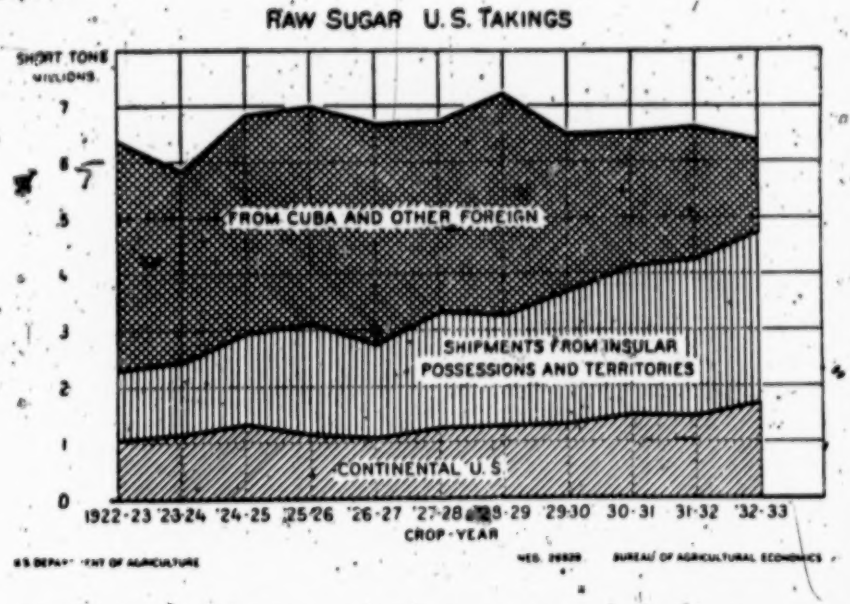
CHARTS

No. 1

WORLD SUPPLY OF SUGAR AND NEW YORK PRICE* OF SUGAR, 1920 TO DATE



No. 2

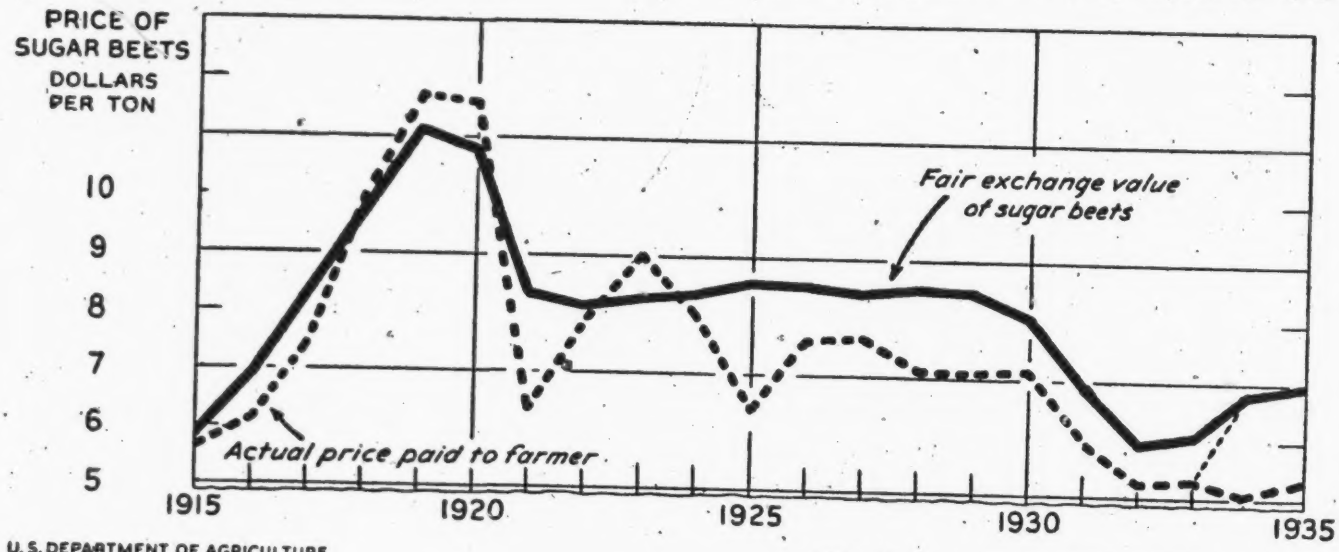


We do not say that it is the duty of the Court to be concerned with the economic results of the Act. However, *amici curiae* do desire to say, that so far as the production of sugar within the continental limits of the United States is concerned, it appears that Congress adopted a sound economic policy in the enactment of the legislation. While in 1932 the average price per ton received by the farmer for sugar beets was much under the parity price the chart below shows that farmers are now receiving the full parity price. In other words a ton of sugar beets now can be exchanged for the same amount of products bought by farmers, as the amount for which a ton of sugar beets could be exchanged during the base period.

Chart No. 3 graphically explains the condition. It shows that prior to the application of the Act the farmer had not received a parity price for this product since the year of 1924. The dotted connecting line at the right of the chart shows the price paid to the farmers for the year of 1934 to join the fair exchange value line. This connecting line

No. 3

FARM PRICE AND FAIR EXCHANGE VALUE OF SUGAR BEETS, 1915-35



U. S. DEPARTMENT OF AGRICULTURE

NEG. 29674 BUREAU OF AGRICULTURAL ECONOMICS

represents the benefit payment resulting from the processing tax which, with the quota provisions, makes the total price received by the farmer equal the fair exchange value. (Page 4.)

While the legislation pertaining to the sugar industry is also concerned with quota provisions not pertinent to the issues of this case, still the Agricultural Adjustment Act in its entirety, including the processing tax, is regarded as indispensable to the farmers welfare, if not to the very existence, of the sugar industry within the continental limits of the United States.

These thousands of farmers and the people indirectly dependent thereon are vitally concerned that the processing tax, as a means of raising revenue, be retained and that the law be declared constitutional.

It is worthy of note here that land cultivated for the production of sugar is thereby removed from the production of crops of which there is an exportable surplus. That in its relation to the whole farm problem and thereby to the problem of the general welfare of the United States the operation of the processing taxes, combined with the other provisions of the Sugar Law not considered in this case, have achieved the goal set by Congress in the Agricultural Adjustment Act, namely a restored purchasing power.

JURISDICTION—STATEMENT OF FACTS

For the purposes of this brief there is adopted the statements found in the brief for the United States with respect to the opinions below, the jurisdiction of this Court, the question presented, the facts, the specification of errors to be urged, and the scope of the Agricultural Adjustment Act.

SUMMARY OF ARGUMENT

The discussion of constitutionality in this brief will be confined to one general proposition, namely

that the operation of the Agricultural Adjustment Act is like a long established and approved use of the taxing power and does not violate either the Fifth or the Tenth Amendments to the Constitution.

In view of the comprehensive scope of the brief filed on behalf of the Government it would be presumptuous of us to seek to make any material contribution of facts showing the general condition of agriculture and its relation to national economic welfare. Likewise we believe it unwise to attempt to add anything but rather to indorse the exposition of the brief for the United States upon the following proposals.

1. That Congress has not attempted any unlawful delegation of legislative power.
   Hampton & Co. vs. *United States,* 276 U. S. 394.
   Field v. *Clark,* 143 U. S. 649.
   Avent v. *United States,* 266 U. S. 127.
2. That the taxes provided by the Agricultural Adjustment Act (a) are excises and (b) meet the requirement for uniformity throughout the United States.
   Patton vs. *Brady,* 184 U. S. 608.
   McCray vs. *United States,* 195 U. S. 27.
   Knowlton vs. *Moore,* 178 U. S. 41.
3. That Congress has power to lay excise taxes and appropriate the monies received to provide for the general welfare of the United States.
   Constitution, Article I, Section 8, Clause 1.
   Holmes vs. *Jennison,* 14 Pet. 538, 570-571.
   United States vs. *Gettysburg Electric Railway,* 160 U. S. 668.

ARGUMENT

It is respectfully urged that the collection of the processing and floor taxes, the subsequent appropriations for and the making of benefit payments is a use of the taxing power and other fiscal powers of the Government not unlike a

long established and approved use. It is the use of the taxing power found in Article I, Section 8, Clause 1, of the Constitution for the general welfare.

LIKE USE OF TAXING POWER HAS BEEN APPROVED

Congress is given power:

> "To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the Common Defence and general welfare of the United States; * * *"

From the time of the very first Congress this power has been used not only for the raising of revenue by the Government, but likewise for the protection of manufactures.

The evidence is indisputable that those who participated in the framing of the constitution intended that manufacturing industries should be encouraged by a protective tariff. Many members of the Constitutional Convention of 1787 were members of the first Congress. The second Act adopted by the first Congress of the United States, July 4, 1789 (Chap. 2, 1 Stat. at L. 24), contained the following recital:

> "Whereas it is necessary for the support of government, for the discharge of the debts of the United States, and for the *encouragement* and *protection* of *manufactures* (412) *that duties be laid on goods, wares and merchandises imported.*" (Italics supplied.)

It is inconceivable that Congress in the levy and collection of tariff duties would have had in mind the purpose of giving to manufactures a special privilege. On the contrary, the use of the taxing power for this purpose in the beginning was unquestionably intended as a use thereof to provide for the general welfare of the United States. This

early Congress not only sought to use the taxing power in the one way for the promotion of the general welfare but it established still another precedent for the use of the power, going even further than that used in the Agricultural Adjustment Act, by providing for what are known as the "cod fish bounties".

Section 4 of the Act, *supra,* provided:

> "That there shall be allowed and paid on every quintal of dried, and every barrel of pickled fish, of the fisheries of the United States, and on every barrel of salted provision of the United States, exported to any country without the limits thereof, in lieu of a drawback of the duties imposed on the importation of the salt employed and expended therein, viz:
> "On every quintal of dried fish, five cents.
> "On every barrel of pickled fish, five cents.
> "On every barrel of salted provision, five cents."

The provision for the bounty was continued in the next session of Congress. (Act of August 10, 1790, 1 Stat. 180, 181, 182.)

It is significant that this early interpretation of the powers of Congress, by those who helped frame the Constitution, established a precedent so nearly like the use of the power under the Act in consideration.

Under the Agricultural Adjustment Act as well as under the cod fish bounties there was legal consideration for the payment but while the fishermen performed only affirmative acts the farmers by contract give up definite property rights.

We find that in his Report on Manufactures, Hamilton (3 Annals of Congress, Appendix P. 1011) in 1791 stated that such measures are constitutional, within the provisions to provide for the common defence and general welfare with no other qualifications than that "all duties, imposts and excises, shall be uniform throughout the United States".

Hamilton's view was further like the effort of the present act to remove disparity, in that he proposed "to lay a duty on foreign manufactures of the material, the growth of which is desired to be encouraged, *and to apply the produce of that duty by way of bounty,* either upon the *production* of the material, or upon its *manufacture* at home, or upon both". * * * (P. 1010) (Italics supplied.)

At that time there were practically no industries. Approximately 90 per cent of our population was engaged in agricultural pursuits. Such industries as existed were indeed "infant" when contrasted with the present organizations. The idea prevailed that national existence required the use of the taxing power for the encouragement of industry. Reading discloses that these makers of the Constitution did not foresee the day when most of our people would be engaged in occupations other than agricultural. We are persuaded that they could not possibly foresee such an integrated, interdependent and complicated society as we now have. However, it is well settled that they intended the power given Congress to be adequate to meet the changing conditions of the time.

> "A constitution intended to endure for ages to come and consequently to be adjusted to the various crises of the human affairs." *McCullock* vs. *Maryland,* 4 Wheat. 316, 407, 4 L. ed. 579, 601.
>
> *Home Building and Loan Association* vs. *Blaisdell,* 290, U. S. 398, 78 L. ed. 413, 431.

The fact that an early Congress did not use the taxing power for the encouragement of agriculture as it did for the promotion of industry is not to say that the power did not exist. There is nothing in the wording of the Constitution which would in any way imply that the founders of our Government intended the use of the taxing power only for the encouragement of one industry and not for another. The plain words of the clause not only show the contrary

to be true, but the legislation adopted and the opinions expressed by the men of the times support our contention.

At no place in the Constitution do we find the words that Congress shall have power "to protect the manufacturing industries". Nevertheless, it would be idle to deny that, in the legislation adopted throughout our history, the power given in Article I, Section 8, Clause 1 of the Constitution not only has been exercised for the purpose of raising revenue but that the motive of protection has been constantly present.

As this Court said, in *Hampton & Co.* vs. *United States*, 276 U. S. 394, the fact that there may have been other motives than the raising of revenue will not prevent the operation of the Act. It is also said in Hampton Case, *supra*:

> "It undoubtedly is true that during the political life of this country there has been much discussion between parties as to the wisdom of the policy of protection, and we may go further and say as to its constitutionality, but no historian, whatever his view of the wisdom of the policy of protection, would contend that Congress since the first Revenue Act in 1789 has not assumed that it was within its power in making provision for the collection of revenue to put taxes upon importations and to vary the subjects of such taxes or rates in an effort *to encourage the growth of the industries of the nation by protecting home production* against foreign competition." (Italics supplied.)

There has been much debate on the wisdom of the policy of protection, but this Court has not denied the exercise of the power to make the policy effective. The first Congress laid duties, to establish the policy of protection of manufactures, not we think, with the idea that manufacturers should have a special privilege as against the other portions of the population but with the idea of promotion of the general welfare.

THE MOTIVE IN THIS ACT IS TO PROVIDE FOR THE GENERAL WELFARE

In passing the Agricultural Adjustment Act it is submitted that Congress was not thinking of the welfare of the individual farmer, or of the farm population alone, but was trying to restore the purchasing power of the farm population of the Nation "for the general welfare of the United States". In the Declaration of Emergency (c. 25, 48 Stat. 31, Title I) this intention is clear:

> "That the present acute economic emergency being in part the consequence of a severe and increasing disparity between the prices of agricultural and other commodities, which disparity has largely destroyed the purchasing power of farmers for industrial products, has broken down the orderly exchange of commodities, and has seriously impaired the agricultural assets supporting the national credit structure, it is hereby declared that these conditions in the basic industry of agriculture have affected transactions in agricultural commodities with *a national public interest.*" (Italics supplied.)

Congress found and determined that, to sustain the general welfare of the country, there could no longer exist such a wide disparity between the price which the farm population received for its products and the price this population had to pay for the products which farmers must buy. This disparity in price was undoubtedly due in part to the result of the policy of protection for industries other than agriculture.

It is not the problem for the Court to determine whether the policy of processing taxes and subsequent appropriations therefrom is a wise policy. It is a matter of common knowledge, however, that the disastrous condition of agriculture and its resulting demoralization upon all the industry and commerce within the United States justified the

Congress in adopting a policy to eliminate, if possible, this disparity in price. That Congress intended to adopt such a policy is clear from reading Section 2 of Title I, the Declaration of Policy:

> "To establish and maintain such balance between the production and consumption of agricultural commodities, and such marketing conditions therefor, as will reestablish prices to farmers at a level that will give agricultural commodities a purchasing power with respect to articles that farmers buy, equivalent to the purchasing power of agricultural commodities in the base period. The base period in the case of all agricultural commodities except tobacco shall be the prewar period, August, 1909-July, 1914." * * *.

THERE IS NO VIOLATION OF THE FIFTH AMENDMENT

It has been argued that the result of this policy is the appropriation of money for private purposes. We respectfully urge, however, that in its ultimate results the operation of the various features of the Agricultural Adjustment Act are no different than the operation of the policy of protection for manufacturing industries.

In the West this Act has come to be known as the "Farmers Tariff". It can be contended no more logically, that this exercise of the taxing power is for the benefit of the farmer alone, than that the protective tariff is for the benefit of the manufacturer alone. The immediate economic effect of a protective tariff on imports is to prevent a low priced surplus and thereby to give to the protected industry the power to receive a greater price for its product, just as the immediate economic effect of reduction in acreage and the production of crops, in consideration of benefit payments, is to give the farm population an increased price for its product. The method of producing the result is not exactly the same, but the economic effect of the plan is the

same and in both it is brought about through the exercise of the taxing power.

Both methods are used for the encouragement of a great unit of our national economic organization. It need hardly be argued that one great sector of our population cannot indefinitely continue with a higher price structure than that afforded another great portion without injury to the general welfare. The Agricultural Adjustment Act seeks to equalize this price structure for the benefit of the whole Nation.

It is the purchasing power of the farmers in relation to other elements of society with which Congress is concerned in the Agricultural Adjustment Act. The policy of protection of industry has been maintained upon the belief that a strong manufacturing industry would create a greater purchasing power for the products of the farms. It is submitted now that a healthy condition of agriculture creates a strong purchasing power for the products of other industries. Whether or not the policy of protection has been economically sound in the maintenance of a protective tariff for industry, the taxing power has been exercised with the motives of better wages for labor, a better home market, a higher standard of living, in short "for the general welfare of the United States".

Both under the Agricultural Adjustment Act and under laws for the protection of industries there is an effort to protect the population within the country from the ruinous effects of world surpluses. It is the effect of a low world price which it is sought to avoid.

If the constitutionality of a taxing law is to be measured by the test;—Does it actually produce revenue?—then, the provisions of the Agricultural Adjustment Act cannot be said to be in conflict therewith. Millions of dollars of revenue have been derived. ("Internal Revenue Collections,

Fiscal Year 1935".) Published by the Treasury Department.

The application of this test to the Agricultural Adjustment Act shows it to be far superior in results to the operation of tariff duties on imports.

The tariff acts of recent years have been advanced to levels so high as to reduce the volume of imports and to actually reduce net revenue. (P. 433-435, Statistical Abstract of the United States 1934.)

A study made by the Tariff Commission in response to a Senate request (Senate Document No. 180, Part 1, 72nd Congress, 2nd Session) revealed 873 items (covering considerably more than that number of articles) on which duties are laid under the Tariff Act of 1930, but of which imports into the United States in 1931 constituted less than five per cent of domestic production. The Tariff Commission, cited above, found that there are 635 items specified in the Tariff Act of 1930 on the imports of which, in 1931, the duties assessed amounted to more than 50 per cent ad valorem.

If there is protection of industry, in addition to production of revenue, the legislation is not void. This is true though the principal effect of the law is protection of industry rather than the raising of revenue. (See *McCray* vs. *United States*, 195 U. S. 27 and *Magnano Co.* vs. *Hamilton*, 292 U. S. 40.)

This survey of the early legislation of our Congress affecting the fisheries, the continued practice of protective tariffs and the operation of the Agricultural Adjustment Act shows all of necessity must be of the same effect so far as being in accord with the provisions of the Fifth Amendment to the Constitution.

Protection by the tariff wall has been declared constitutional by this Court in the only case in which the question was squarely before the Court.

"The enactment and enforcement of a number of customs revenue laws drawn with a motive of maintaining a system of protection since the Revenue law of 1789 are matters of history." • • •

"More than a hundred years later, the titles of the Tariff Acts of (July 24) 1897 (30 Stat. at L. 151, Chap. 11), and (August 5) 1909 (36 Stat. at L. 11, Chap. 6), declared the purpose of those acts, among other things to be that of encouraging the industries of the United States. The title of the Tariff Act of 1932, of which § 315 is a part, is, 'An Act to Provide Revenue, to Regulate Commerce with Foreign Countries, to *Encourage the Industries* of the United States and for Other purposes'. Whatever we may think of the wisdom of a protection policy, *we can not hold it unconstitutional.*" (Italics supplied.)

Hampton, Jr. & Co. vs. *United States,* 276, U. S. 394.

THERE IS NO VIOLATION OF THE TENTH AMENDMENT

Under the Agricultural Adjustment Act the farm population is not told what it shall raise nor how much nor under what conditions. Farmers have the same privilege of exercising all the liberties of citizenship common to those engaged in the industries.

Under the Act farmers have the same option to contract for reducing production and to receive benefit payments therefor or to stay without the program if they so desire just as the States had in the statute considered and upheld in the case of *Massachusetts* vs. *Mellon,* 262 U. S. 447. That farmers are not being "regimented" in any harmful manner under the Act seems to be clearly shown by the overwhelming vote they have registered for the continuation of these programs. This is truly economic as well as political democracy. Just as under a protective tariff those engaged in industry have not been compelled to participate in, nor refrain from, production, so under the Agricultural Adjustment Act each and every farmer is entitled

to the same right. Whether or not, and to what extent a man may engage in agriculture is a matter of his own economic ability and his own free will. It is only if and when he chooses by contract, that the aid of the governmental organization gives cooperation but not coercion nor control. Thus it is seen that this use of the taxing power does not usurp any powers reserved to the people but is an exercise of the power expressly given the national government to provide for the general welfare which has been a continuing policy of our government from the time of its creation to the present day.

Likewise the legislation is not the use of a power reserved to the states by the Tenth Amendment to the Constitution. This use of the taxing power is not shown to be in conflict with the rights of any state nor is it shown that the exercise of its sovereign powers have been denied any state. As the words "Duties" and "Excises" are used in the taxing power clause (Article I, Section 8, Clause 1), both are of equal standing and must be construed of equal force. It is not said in the Constitution that "Duties" may be used by Congress with certain motives and for one purpose, while "Excises" must be used only with other motives and for a different purpose.

The Constitution, without any distinction, says that both duties and excises may be used to—provide for the—general welfare of the United States.

Therefore it surely cannot be contended that Congress does have the power to lay Duties to protect the industries and at the same time to argue that the exercise of the power of laying Excises for the encouragement of farming is a power reserved to the States. The latter is not the attempted exercise of a new power. It is merely a like use of the same power common throughout our history. We must conclude, therefore, that there is no violation of the Tenth Amendment.

CONCLUSION

In conclusion it is submitted that not only the economic results justify the judgment of Congress in passing the Act, but that the decisions of this Court sustaining the long established use of the taxing power for the production of like results in industry, make it proper that the law be declared Constitutional. To deny the exercise of the same power for the encouragement of that great portion of our population engaged in agriculture would seem not only inconsistent with the ruling of this Court, but also contrary to the general welfare of the United States, because when the farm population has lost its purchasing power, the economic welfare of the nation as a whole must collapse. We respectfully submit that the Act should be upheld and that the decision below should be reversed.

Respectfully submitted,

CLAY R. APPLE, *Counsel for*
The National Beet Growers Association
and
The Mountain States Beet Growers Marketing Assn.